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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,701	06/01/2000	Irene Lin	SLA 001	5051

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EXAMINER

CHANG, VICTOR S

ART UNIT PAPER NUMBER

1771

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/584,701

Applicant(s)

LIN, IRENE

Examiner

Victor S Chang

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-18.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

NOTE

1. Applicant's amendments to claims 1 and 10 have been entered, so as to place the Application in better form for appeal by materially reducing or simplifying the issues for appeal.
2. Applicant had an interview on 6/21/2004 to discuss the properness and motivation of prior art combination, as follows.
3. Applicant's amendment and remarks filed on 5/26/2004 have been carefully reconsidered, but are not persuasive. The Examiner notes that Applicant has mischaracterized the reasoning of prior allowance (withdrawn), and repeats (see Office action mailed 8/28/2003) that the prior allowance was on the basis of the lack of a suitable evidentiary support for alternative equivalent vent openings, because the relied upon evidentiary support by Chalis et al. (US 5672406) requires a two-layer structure, whereas Gaikema's base layer has a single-layer structure, which renders the evidentiary support by Chalis improper. However, the allowance was withdrawn (see Final Office action mailed 3/29/2004) upon reviewing the JP 11-079260 (IDS submitted 8/11/2003), which teaches alternative equivalent vent openings based a single-layered film.
4. Applicant argues that the amendment to claim 1 clarify the structural feature of instant invention can be "restored", whereas the prior art lack restorability, the Examiner responded that being able to be "restored" is clearly a functional feature, not a

structural element, and also appears to be inherent material property, particularly in view of the same scope of composition being taught by the prior art.

5. With respect to Applicant's proposed structures (Figs. 1-3) of prior combination, and argues that the prior art combination fails to render the structure of instant invention obvious. The Examiner notes that the proposed combinations of Figs 1 and 2 are not the prior art embodiment being relied upon in the Final Office action mailed 3/29/2004, and there are no remarks for Fig. 3, while it is also noted as irrelevant to the relied upon embodiment of JP '260.

6. To further clarify the Final Office action, the Examiner repeats (see Office actions mailed 3/29/2004 and 4/26/2003 and 12/19/2002, pages 3-4, respectively) that Gaikema is directed to a packaging product comprising a polypropylene cover having at least one vent hole approximately 0.4 mm in diameter, the vent hole being closed by a hot melt of ethylene vinyl acetate (Example 1). Gaikema's polypropylene cover having at least one vent hole reads on Applicant's polymer composite layer having two sides with a plurality of tiny gaps which are pseudo-closed for air permeation initially. The vent holes of Gaikema are hermetically sealed by the ethylene vinyl acetate hot melt. Therefore, the ethylene vinyl acetate hot melt of Gaikema reads on Applicant's nonstick sealing layer attached to one side of the polymer composite layer for filling the gaps to prevent air permeation. For independent claims 1 and 10, Gaikema lacks a teaching that the gaps comprising two edges in contact with each other to form a closed gap. However, it is known that various openings, including the ones in which the edges are in contact, can be used for increased gas permeability when the temperature increases. Note also as

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evidence of the state of the art JP '260, which shows in Fig. 2 in plan view that various shapes of openings can be used to form vent openings, including openings which appears to have edges in contact initially. As such, in the absence of unexpected results, it would have been obvious to one skilled in the art to modify Gaikema's vent openings with various equivalent openings of JP '260, motivated by the desire to accommodate various venting requirements. Further, it is *prima facie* obvious to substitute equivalent structural element of which is taught by the prior art to be useful for the same purpose. See MPEP § 2144.06.

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1700

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